

**\*\*\*DRAFT - DO NOT CITE OR QUOTE \*\*\***

Recommendations of the Cal/EPA Environmental Justice Advisory Committee  
to  
the Cal/EPA Interagency Working Group on Environmental Justice

**draft date: March 18, 2003**

## **I. Environmental Justice in California**

The Environmental Justice movement is deeply rooted in civil rights, and the struggles of people who have historically been marginalized. In their fight to be treated fairly and accorded equal protection under all of our nation's laws, they have demanded equal protection of their health and environment. In particular, the Environmental Justice movement has been championed by people of color, Native American tribes, farmworkers, and low-income communities. The movement has been characterized by passionate debate, and many different views; although this report does not completely set out the scope of these views, we must acknowledge their importance in shaping public policy. As background, a general history of the movement is provided. A more detailed summary\*\* is appended to the report, as is a list of additional references. What this report does show, however, is that Environmental Justice is of great importance to the people of California, and has become a fundamental goal for the state's environmental programs.

California law defines "Environmental Justice" to mean: "The fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of all environmental laws, regulations, and policies" (Government Code Section 65040.12).

*\*\*Note to Committee: The "summary" referred to here is a placeholder - the Committee has not discussed this item, nor decided what, if any, summary would be attached. Still needed, as of 3/18/03.*

Environmental Justice first gained national prominence through a protest against the proposed siting of a landfill for polychlorinated biphenyls (PCBs) in a predominately African-American county in North Carolina. The phrase "environmental racism" was used to refer to policies and activities that, either intentionally or unintentionally, result in the disproportionate exposure of people of color to environmental hazards. A 1983 study published by the U.S. General Accounting Office (GAO) found that in the southeastern United States, three of four commercial hazardous waste landfills were in communities with more African Americans than whites. The United Church of Christ Commission for Racial Justice expanded the 1983 GAO study to the national level and found similar results. A total of 45 studies conducted by various investigators between 1976 and 1993 examined the role of race and income level in exposure to environmental hazards, and found disparate impacts in the great majority of cases studied (87 percent and 74 percent, respectively; see Appendices F and I for references)\*\*.

*\*\*Note to Committee: Cal EPA staff have not yet fully reviewed the referenced material, nor has the Committee been provided with these studies; the figures cited were taken from a separate report prepared for Cal EPA by an intern and should be verified prior to finalizing this report. Romel has agreed to do this. Still needed, as of 3/18/03.*

In October of 1991, advocates attending the First National People of Color Environmental Leadership Summit drafted a statement called “Principles of Environmental Justice.” These Principles articulated broad goals for communities and environmental justice. They asserted that all people have a fundamental right to clean air, water, land, and food. They called for policy based on mutual respect, free from discrimination or bias. They affirmed communities’ right to self-determination, and to participate as partners in every level of decision-making, including needs assessment, planning, implementation, enforcement, and evaluation. Finally, the principles expanded the concept of “environment” beyond ecological and natural systems, to include places where people live, work, play, and go to school.

In 1994, a newly inaugurated President Clinton issued Executive Order 12898: “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.” The executive order requires that all federal agencies incorporate environmental justice into their missions. Specifically, federal agencies are required to address situations where their programs, policies, or activities result in adverse health or environmental impacts that are disproportionately high and adverse in low income communities or communities of color.

*Note to Committee: the Subcommittee requested verification of the next three sentences. Still needed, as of 3/18/03. Counsel to the Committee indicated that legislation had not been passed. Discussion pointed to some of the following points being covered in the letter that accompanied the order; the Committee requested a copy of the letter and that the letter be included in the appendices.*

The order is binding on all federal agencies. Some of the specific steps agencies were directed to take include enhanced public participation in federal assessments of potential environmental impacts from proposed projects, and increased public access to environmental information, documents, and meetings. Agencies were also directed to analyze the effects of permitting decisions on low income communities and communities of color, and to apply the non-discrimination requirement of Title VI of the 1964 Civil Rights Act to environmental decision-making.

There is an important aspect of Environmental Justice that has been more fully articulated, and more consistently implemented, at the federal level than in California. It involves Environmental Justice as it relates to Native American tribes. The federal government holds a “trust responsibility” with tribes that “requires the federal government consider the best interests of the Tribes in its dealings with them and when taking actions that may affect them. The trust responsibility includes protection of the sovereignty of each Tribal government” (for references and further discussion, see Appendix G: Environmental Justice and Tribes). The federal government also has a consistent policy of conducting its relationships with Tribes on a

government-to-government basis. This has not always been the case in relationships between Tribes and states, including the State of California. The central point of contention is the limited (or complete lack of) applicability of state law on tribal lands. As a result, there are a number of issues that further complicate Environmental Justice for Native American Tribes in California. These issues include, but are not limited to, the need for clearer definition of and limits on sovereignty, the impacts of the delegation of federal authority, cross-border impacts between Tribal and non-tribal lands, differences between Tribal, federal and state standards and environmental programs, and the handling of socioeconomic impacts.

*Note to Committee: This summary is extracted from the discussion paper provided to the Committee for the meeting on 1/10/03. The Committee needs to decide if an Appendix is needed (as referenced above), and if so, if the discussion piece should be the basis for it or if some other piece should be prepared. Still needed as of 3/18/03*

Environmental Justice became part of California's laws through legislation enacted between 1999 and 2001. The term "environmental justice" was formally defined when Governor Davis signed Senate Bill 115, authored by Senator Hilda Solis, in 1999. This bill designated the Office of Planning and Research (OPR) as the agency charged with coordinating the state's efforts for environmental justice programs. It also required the California Environmental Protection Agency to take specific actions in designing its mission for programs, policies, and standards within the Agency. In 2000, Governor Davis included a specific appropriation to Cal/EPA for its environmental justice program, and also signed Senate Bill 89, authored by Senator Martha Escutia. SB 89 established a procedural framework for pursuing environmental justice, and created the Interagency Working Group on Environmental Justice, which includes the heads of Cal/EPAs Boards, Departments, and Office, and the director of the Office of Planning and Research. SB 89 also created the Advisory Group on Environmental Justice, made up of external stakeholders, to assist the Working Group in developing a strategy to identify and address environmental justice gaps in Cal/EPA programs (additional details are provided in Section II, Legislative Mandate). Senate Bill 828 (Alarcon, 2001) established a deadline for the Cal/EPA Boards, Departments and Office to identify and address gaps in their programs that may impede the achievement of environmental justice. Finally, Assembly Bill 1553 (Keeley, 2001) required the Office of Planning and Research to establish guidelines for incorporating environmental justice into the general plans adopted by cities and counties. Additional information about these bills, and the agencies they affect is discussed in the next section of this report.

This report has been prepared by the California Environmental Protection Agency's Advisory Committee on Environmental Justice. The report covers specific areas in response to legislative mandate. More importantly, this report reflects the collective judgement of the Committee about the steps needed to make Environmental Justice a reality for all Californians.

The Advisory Committee on Environmental Justice fully supports the goal of Environmental Justice, as defined in state law, for all Californians. The Committee recognizes that this goal has not yet been reached. There are still gaps in data, and tools that need to be developed, but the Committee believes that there are also steps that can be taken now. This report outlines many things that can and should be done to achieve the goal of Environmental Justice. The Committee

fully endorses the use of good science, and robust and meaningful participation by the public in environmental decision-making; at the same time we do not want our recommendations for developing data and tools to result in delays in implementing those steps that can clearly be taken right away. To that end, the Committee's report also includes timelines and next steps, and above all, accountability for implementing these recommendations.

*Note to Committee: The preceding paragraph is a first crack at an "Issue Statement" and reflects the flavor of the discussion at the meeting on 1/10/03. The Committee still needs to decide if this is an appropriate statement, as of 3/18/03.*

## II. Legislative Mandate

In California, legislation on environmental justice has mandates focused on four entities: Cal/EPA, OPR, the Interagency Working Group, and the Advisory Committee. Cal/EPA is the umbrella agency that oversees all of the state's environmental agencies, also known as its Boards, Departments, and Office. These agencies make environmental decisions for the state, and must ensure environmental justice in their decision-making. The agency that has the overarching responsibility for coordinating environmental justice programs for all state agencies, however, is the Office of Planning and Research, or OPR. The director of OPR, the Secretary of Cal/EPA, and the heads of the Cal/EPA Boards, Departments, and Office, sit together on the Interagency Working Group on Environmental Justice; this working group must create a strategy to identify and address environmental justice gaps within their respective programs. In order to assure active and balanced participation by affected stakeholders outside of these agencies, the Legislature also established the Cal/EPA Advisory Committee on Environmental Justice. This Report was prepared by the Advisory Committee in response to a specific legislative mandate. It also includes recommendations that go beyond the specific mandate, that the Advisory Committee felt were important to bring forward. This section of the report provides a brief description of the four entities mentioned above, and their specific mandates on Environmental Justice. Please refer to Appendix H for more complete information about California State law on Environmental Justice.

The Cal/EPA Boards, Departments, and Office (BDOs): The California Environmental Protection Agency, or Cal/EPA coordinates the activities of six environmental Boards, Departments, and Office, including the Air Resources Board, the Department of Toxic Substance Control, the Integrated Waste Management Board, the Department of Pesticide Regulation, the Office of Environmental Health Hazard Assessment, and the Water Resources Control Board. The mission of Cal/EPA is "To improve environmental quality in order to protect public health, the welfare of our citizens, and California's natural resources. Cal/EPA will achieve its mission in an equitable, efficient, and cost-effective manner." The agency has historically focused on multi-media coordination. It is now responsible for taking specific actions to achieve Environmental Justice in California.

Senate Bill 115 (Solis, 1999) requires the agency to conduct its programs and promote enforcement in a manner that "ensures fair treatment of people of all races, cultures, and income levels, including minority populations and low-income populations of the state," and develop a model mission statement on Environmental Justice. It also directs Cal/EPA to ensure greater

public participation in the development, adoption, and implementation of its environmental regulations and policies, promote enforcement, improve research, and identify differential patterns of consumption of natural resources between different socio-economic groups.

Senate Bill 89 (Escutia, 2000) charges the Secretary of Cal/EPA to convene a working group (see below) to assist the agency in developing “an agencywide strategy for identifying and addressing gaps in existing programs, policies, or activities that may impede the achievement of environmental justices.” SB 89 also directs the Secretary to convene an advisory group of external stakeholders (see below) to assist the agency and the working group in developing the agency’s strategy.

Senate Bill 828 (Alarcon, 2001) requires each Cal/EPA BDO to review its programs, policies, and activities to identify and address gaps that may impede the achievement of environmental justice. The Bill also established statutory deadlines for the completion of specific actions under SB 89.

These bills have been incorporated into California law in Government Code, Section 65040.12 (Title 7, Division 1, Chapter 1.5, Article 4), and Public Resources Code, Sections 71110-71116 (Division 34, Part 3). Please refer to Appendix H for more complete information about California State law on Environmental Justice

Cal/EPA’s six Boards, Departments, and Office, and their mission statements, are described below:

*The Air Resources Board (ARB):* The ARB oversees activities of 35 local and regional air pollution control districts. Districts regulate industrial pollution sources, issue permits, and ensure industries adhere to air quality mandates. The ARB also has primary responsibility for regulating emissions from mobile sources in California, the largest emissions sector, as well as consumer products. Its mission statement is “To promote and protect public health, welfare and ecological resources through effective and efficient reduction of air pollutants in recognition and consideration of the effects on the economy of the state.”

*The Department of Toxic Substances Control (DTSC):* DTSC regulates hazardous waste facilities. It also oversees the cleanup of hazardous waste sites and ensures that state and federal requirements for managing hazardous wastes are implemented. Its mission statement is “To protect public and the environment from harmful exposure to hazardous substances, without unnecessarily impacting sustainable growth and development.”

*The Integrated Waste Management Board (IWMB):* The IWMB promotes achievement of waste diversion mandates by local jurisdictions (cities and counties). It fosters markets for recovered recyclables, and enforces legal provisions to protect the environment and public’s health and safety. Its mission statement is “To reduce waste, promote the management of all materials to their highest and best use, and protect public health and safety and the environment, in partnership with all Californians.”

*The Department of Pesticide Regulation (DPR)*: DPR regulates pesticide sales and use, and fosters reduced-risk pest management. The Department also oversees product evaluation/registration, environmental monitoring, and residue testing of fresh produce. It also oversees local use enforcement through the county agricultural commissioners. Its mission is “To protect human health and the environment by regulating pesticide sales and use and by fostering reduced-risk pest management.”

*The Office of Environmental Health Hazard Assessment (OEHHA)*: OEHHA identifies and determines levels of chemicals that cause cancer and reproductive harm. Its mission statement is “To protect and enhance public health and the environment by objective scientific evaluation of risks posed by hazardous substances.”

*Note to Committee: The Committee requested an updated description of OEHHA (and any other BDO whose responsibilities have changed since we were provided with descriptions of their programs in January 2002. Any updates will be incorporated when received. This is still needed, as of 3/18/03.*

*The State Water Resources Control Board (SWRCB)*: The Board allocates water rights and arbitrates water right disputes. It develops statewide water protection plans, establishes water quality standards, and guides the nine Regional Quality Control Boards. Its mission statement is “To preserve and enhance the quality of California’s water resources, and ensure their proper allocation and efficient use for the benefit of present and future generations.”

The heads of each of the Boards, Departments, and Office are required to participate in the Cal/EPA Interagency Working Group (see below) under SB 89. They are also required by SB 828 to implement the strategy developed in consultation with the Interagency Working Group and the Cal/EPA Advisory Committee (see below).

*The Office of Planning and Research*: The Office of Planning and Research (OPR) is established as the coordinating agency in state government for Environmental Justice programs, under SB 115, in Government Code § 65040.12(c). OPR holds one-day workshops to teach state agency personnel about environmental justice, its statutory underpinnings, and how to address environmental justice issues that may arise in their work. The Office may provide more detailed and specialized training at a later date for interested state personnel who have completed the basic training. SB 89 requires the director of OPR to sit on the Interagency Working Group, along with the heads of the Cal/EPA Boards, Departments, and Office. It also requires the director to consult with the Secretary of Cal/EPA, the Resources Agency, the Trade and Commerce Agency, the Business, Transportation and Housing Agency, and the Cal/EPA Interagency Working Group on Environmental Justice, and any other appropriate state agencies, and all other interested members of the public and private sectors of the state. The director must coordinate the Office’s efforts and share information, and review and evaluate information from federal agencies relevant to environmental justice. AB 1553 (Keeley, 2001) requires OPR to develop guidance for local land-use planning agencies to incorporate environmental justice into their General Plans. At the time of this report, OPR has developed and circulated a draft guidance document for public review and comment.



The Cal/EPA Interagency Working Group: The Cal/EPA Interagency Working Group is made up of the Secretary of Cal/EPA, the heads of its Boards, Departments and Office, and the director of OPR. Under SB 89, the Working Group is required to examine existing data and studies on environmental justice and coordinate with other governmental agencies, and community groups. It is directed to recommend criteria to the Secretary of Cal/EPA for identifying and addressing any gaps in existing programs, policies, or activities that may impede achievement of environmental justice. It must recommend procedures and guidance to Cal/EPA for coordination and implementation of environmental justice, and for data collection, analysis, and coordination. It must also recommend procedures to ensure that public documents, notices, and hearings are concise, understandable, and readily accessible, and provide guidance for determining when it is appropriate for Cal/EPA to translate crucial documents, notices, and hearings for limited-English-speaking populations. The Working Group is also required to hold public meetings and take public comments on their proposed recommendations.

The Cal/EPA Advisory Committee on Environmental Justice: The Cal/EPA Advisory Committee on Environmental Justice was established in December, 2001, in response to Senate Bill 89 (Escutia, 2000). The membership and mission of the Committee is set out the Public Resources Code § 71114. The Committee was originally created with thirteen members from specific sectors of external stakeholders. These thirteen members include: two representatives of local or regional land use planning agencies; two representatives from air districts; two representatives from certified unified program agencies (CUPAs); two representatives from environmental organizations; three business representatives (two from large and one from small business); and two representatives from community organizations. One of the first actions taken by the Committee, in response to valid concerns from the public, was to vote to support legislation to expand the representation on the Committee. In particular, numerous public complaints were made that the Committee did not include representation from African American community groups and Native American tribes, nor did the community/environmental group membership reflect a good geographic representation of the state. The legislation (Senate Bill 1542, Escutia) which was supported by the Committee, was signed by Governor Davis in September, 2002. Under this bill, four members were added to the Committee, which now includes seventeen members. The four new members include two additional representatives from community groups (both of whom represent African American communities), one representative of Native American tribes, and one additional representative of small businesses. The new members also bring greater geographic diversity to the Committee.

Under Senate Bill 89, the Committee is mandated to assist Cal/EPA and the Interagency Working Group “by providing recommendations and information to, and serving as a resource for” them as they carry out their Environmental Justice mandates (Public Resources Code § 71114(a)).

### **III. Purpose and Summary of Recommendations**

*Note to Committee: This section is based on the revised recommendations in Section V. The Committee has not yet reviewed or approved those revisions.*

The Committee's recommendations are being made to the Secretary of Cal/EPA and the Interagency Working Group, in response to the specific mandate to the Committee under SB 89. In formulating these recommendations, the Committee sought and received extensive public input. As an outgrowth of the process, the Committee has identified ways to further the goal of Environmental Justice that go beyond those areas specifically outlined in SB 89. These recommendations are intended to assist Cal/EPA and Interagency Working Group as they develop their strategy to achieve Environmental Justice in California. The Committee has also made recommendations to entities outside the Cal/EPA umbrella that the Committee feels have an important role in achieving Environmental Justice, especially if their actions will affect the success of Cal/EPA's strategy.

The Committee reviewed the charge to the Interagency Working Group in SB 89, as detailed in Section 71113 of the Public Resources Code. The Working Group is charged to do six essential things (described in Section II, above). The Committee's recommendations respond to this mandate as follows:

*Note to Committee Members: This summary now reflects the recommendations as revised following the Committee meeting on 1/10/03. NOTHING has been updated to reflect the changes from the 1/21/03 meeting. The last three sections of the report are treated cursorily, because they still have no substance. As before, this summary will change to reflect Committee changes to the body of the recommendations.*

***Examine existing data and studies on Environmental Justice, and consult with other agencies and affected communities.*** In reviewing existing knowledge about Environmental Justice, the Committee has engaged in an extensive public process. Community members provide a wealth of knowledge about the effectiveness of agency efforts to ensure Environmental Justice. The Committee has undertaken only a limited review of existing data and studies. By virtue of its membership, however, and the public process it has undertaken, the Committee has also consulted with other agencies. Section IV of this report details the process undertaken and comments received, in order to help the Working Group accomplish this legislative charge.

***Recommend procedures to ensure that public documents, notices, and hearings are concise, understandable, and readily accessible to the public, and provide guidance on when it is appropriate to provide translation for limited-English speakers.*** The recommendations of Section V, Goal #1 are intended to help the Working Group accomplish this legislative charge. The Committee considered public participation in a broader context, believing it is a crucial part of achieving Environmental Justice, and listed criteria that identify successful and unsuccessful programs in public participation. Specific guidance is provided to enhance the availability of information and the effectiveness of efforts to increase public participation in agency decision-making processes. Guidance is also provided on other aspects of meaningful public participation, and largely responds to the input received from community members. Due to time constraints and the number of significant issues considered by the Committee, the Committee was not able to provide guidance on when it is appropriate to provide translation.



***Recommend criteria for identifying and addressing any Environmental Justice gaps in existing programs, policies, or activities.*** The recommendations under Section V, Goal #2 are intended to help the Working Group accomplish this legislative charge. The Committee has not discussed criteria in any systematic way. Instead, the Committee has listed the general criteria that identify program elements that successfully incorporate Environmental Justice. The Committee has also provided recommendations about specific program areas, in response to the issues raised in the public comment process.

*Note to Committee: This is a revised summary of the Criteria issue and reflects changes to that part of Section V. The Committee has not concluded its discussion of criteria setting, and needs to come to some conclusions about this issue. Please see the notes in Section V for further clarification. Still an issue as of 3/18/03.*

***Recommend procedures for data collection, analysis, and coordination, relative to Environmental Justice.*** The recommendations under Section V, Goal #3 are intended to help the Working Group accomplish this legislative charge. The Committee has provided recommendations in these areas, and has included an additional areas based on public input. Community groups were anxious to play a broader role in studies that involve their communities. They are seeking opportunities and support for community-based research (discussed in more detail later), and the Committee has included recommendations addressing this issue. We note, however, that some commenters expressed hope that Cal/EPA would avoid using research and data gathering to delay acting on issues that require immediate attention.

***Recommend procedures and guidance for the coordination and implementation of intra-agency Environmental Justice strategies.*** The recommendations under Section V, Goal #4 are intended to help the Working Group accomplish this legislative charge. The Committee has provided recommendations for intra-agency coordination, but felt some additional areas were pertinent to this carrying out this charge. Specifically, the Committee has also included recommendations for better coordination with agencies outside of Cal/EPA, and also for making sure Cal/EPA and its Boards, Departments, and Office are accountable to the public for strategy they ultimately develop to address Environmental Justice.

The Committee's recommendations for entities outside of Cal/EPA are organized by entity under Section VII, Other Recommendations. They are provided in the spirit of better communication and coordination, and in hope that they will help achieve Environmental Justice for all Californians. Additional materials that will help the reader understand and use this report to further the goal of Environmental Justice are provided in Section VIII, Background Materials and References.

In general, the recommendations of this Committee reflect its commitment to sound science and robust public participation. In fact, the theme of meaningful public participation is central throughout all of the recommendations. At the same time, the Committee believes that pursuit of data, tools, and better processes should not prevent an agency from taking steps in the near term to address known Environmental Justice problems. To this end, the Committee has made a

special effort to identify actions that can be taken quickly, and has included recommended next steps and timelines to enhance accountability.

*Note to Committee: This is a rough stab at a "Summary of how Recommendations Respond to Committee's Issue Statement" and is based on the draft issue statement included in this latest version of the document. It will change in response to Committee revisions to the issue statement.*

#### **IV. Summary of Public Participation and Comments Received**

The Environmental Justice Advisory Committee recognized, early-on, that developing recommendations and advice to Cal/EPA and the Interagency Working Group on Environmental Justice (IWG) required a concerted effort to ensure that all stakeholders, particularly communities most impacted by environmental justice issues, directly informed the discussions and dialogues of the EJ Advisory Committee. In preparing the Recommendations, the EJ Advisory Committee received considerable public input from various stakeholders, including community residents, community groups, non-profit organizations, environmental organizations, public agencies, business and industry sectors. In addition, input was received from the broad range of viewpoints and expertise of the Advisory Committee members themselves. Information and input received during public participation and involvement processes formed the scope and framed the issues and content of the Report. An involved series of public participation opportunities included:

- Public comments/testimony from EJ Advisory Committee meetings;
- Public workshops of the draft EJ Strategy Framework (Oakland, Fort Ord, Fresno, Los Angeles, and San Diego); and
- Written comments.

The first two public meetings of the EJ Advisory Committee (May 2002 in Los Angeles, and June 2002 in Oakland), the EJ Advisory Committee and the Interagency Working Group served to frame key environmental justice priorities and issues, and the subsequent Public Workshops (convened by Cal/EPA staff) held in September 2002 throughout the state of California refined and further informed issues for consideration by the EJ Advisory Committee. The EJ Advisory Committee had the responsibility to make decisions regarding various issues that came before it, and how those issues would be communicated and translated into the recommendations. When making decisions, the EJ Advisory Committee sought the most inclusive and informed consensus of the Committee, and when consensus could not be reached, a vote of the majority was sought. As described in the EJ Advisory Committee by-laws, each member has the opportunity to communicate a dissenting or alternative opinion to the majority opinion of the Committee.

##### Overview of Public Comments/Input Received

Issues related to environmental justice and opportunities to address environmental justice are many and far-reaching. As heard during the series of public participation processes, the challenge before the EJ Advisory Committee was to craft and communicate a set of Recommendations to Cal/EPA and the IWG that was mindful of the realities facing affected communities, populations, and interested stakeholders/constituencies in California.

Four overarching draft Strategy Elements, framed as a result of the Advisory Committee meetings and public testimony, formed the foundation of the Recommendations. The four overarching Strategy Elements were:

- **Element #1:** *Ensure environmental justice is integrated into the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.*
- **Element #2:** *Ensure meaningful public participation and promote community capacity building to allow communities to be effective participants in environmental decision-making processes.*
- **Element #3:** *Improve research and data collection to promote and address environmental justice related to the health and environment of communities of color and low-income populations.*
- **Element #4:** *Ensure effective cross-media coordination and accountability in addressing environmental justice issues.*

Cal/EPA staff convened five public workshops to seek input into the draft EJ Framework. The public workshops were attended by approximately 200 individuals representing community organizations, nonprofit groups, residents, business and industry groups, and public agencies.

*Note to Committee: The Subcommittee requested that a paragraph be included to explain how the four elements were used in the public process to guide discussion at the public meetings, and to provide a framework for written comments. Romel has agreed to provide this discussion. Still needed, as of 3/18/03.*

As hoped, the public comments and input (both written and oral) received during the public workshops represented diverse views. Geographic specific issues/priorities were communicated, as well as programmatic concerns related to environmental justice implementation at all levels of environmental decision-making.

#### General Comments

The overall intent and purpose of the EJ Framework presented overarching concerns regarding:

- How far-reaching is the Cal/EPA EJ Strategy and its impact on other levels of government (local agencies, other state agencies, and federal entities)?
- The process for the development of a Cal/EPA EJ Strategy needs to be mindful of the legislative intent of criteria development to identify gaps in environmental programs.

#### The Four Strategy Elements

Public comments related to the four draft strategy elements represented a wide range of viewpoints and generated various discussions associated with the identification of media-specific and programmatic environmental justice efforts outlined in the EJ Strategy Framework.

A full summary of the public comments related to the four strategy elements is attached as Appendix H.

## **V. Recommendations of the Cal/EPA Advisory Committee on Environmental Justice**

Note to Committee: Section V has been revised to include Committee comments on Goal #1, and the PRELIMINARY discussions of Goal #2 on January 21, 2003. It does not reflect ANY of the discussion at the February 18, 2003 meeting (i.e., precautionary principle or cumulative impacts). Note that the Committee reached “conceptual agreement” on Goal #1, but did not approve the actual wording. There has been no agreement (conceptual or otherwise) on Goals #2, #3, or #4. In this section ONLY, the underline-strikeout format has been used selectively, to highlight the changes in substance, or wording where the words were the focus of the debate; changes solely in formatting, grammar, spelling, etc. are NOT highlighted. This was done to make the substantial changes easier to see.

In considering its Recommendations, the Committee sought and received substantial public comment (see previous section). The Committee has given careful consideration to the comments made by the public, and is grateful for the input. The Committee has structured its Recommendations around four key elements. These elements are framed after the four draft strategy elements, and have been identified by the Committee as Environmental Justice goals. Broadly, they reflect the mandates given to the Committee and the Interagency Working Group. The elements also reflect the Committee’s understanding of the broader issue of environmental justice, and therefore encompass more than the specific items the Committee was directed to address. The goals include: (1) providing for meaningful public participation, (2) integrating Environmental Justice in all environmental programs, (3) improving research and data collection with respect to Environmental Justice, and (4) ensuring coordination and accountability in addressing Environmental Justice.

The Committee expects that each Cal/EPA Board, Department, and Office will develop its own policy document to more specifically guide its Environmental Justice program. The four Environmental Justice Goals identified by the Committee should guide the creation of each BDO policy document. For each Goal, the Committee has established a general check list of the criteria that distinguish successful programs in that area. A list of warning indicators is also provided, to alert the BDOs to programs that may not be achieving the Environmental Justice Goals. The BDOs should use these lists as they develop and implement policies and actions for Environmental Justice.

***Goal #1: Ensure meaningful public participation and promote community capacity building to allow communities to be effective participants in environmental decision-making processes.***

Meaningful public participation is critical to the success of any effort to address environmental justice issues. For that reason, it is the first goal identified by this Committee, and the successful implementation of the other goals rests on realizing this one. The criteria that distinguish successful programs for meaningful public participation include:

- ✓ Guidelines for meaningful public participation
- ✓ The identification of an office or contact person who has authority and responsibility for coordinating effective public participation opportunities
- ✓ Awareness of and sensitivity to community-specific communication issues (including media, venue, language, and other cultural issues)
- ✓ Relationship building prior to environmental decision points
- ✓ Education and technical assistance (capacity building) to support meaningful participation in environmental decisions
- ✓ Early public involvement in environmental decisions
- ✓ Availability and timeliness of materials and information
- ✓ Feedback to participants and commenters

There are also indicators that a public participation program is not successful. If one or more of these indicators are present, the underlying cause(s) should be examined because there are other reasons that these circumstances might occur even if the program itself is sound. Gaps in programs that result in less meaningful public participation may be indicated by the following warning indicators:

- Complaints from the public (including lack of opportunity to comment, inadequate notice of events, inconvenient meeting times/locations, unavailable materials, lack of responsiveness from agency, etc.)
- Poor attendance at public meetings and low response to notices, requests for comment, etc.
- Lack of participation by a particular community or segment of a community, especially if English is not the primary language
- General belief within the community that their input is not considered.

The Committee recommends specific actions to ensure meaningful public participation in environmental decision-making. The recommendations are organized into four categories. These categories are (a) Guidelines & Staff Training, (b) Availability of Information, (c) Capacity Building, and (d) Relationship Building.

Guidelines & Staff Training: These are recommendations for internal activities to support meaningful public participation.

- Develop guidelines for agency staff on meaningful public participation and community relations that emphasize collaboration with community members on environmental issues and building and sustaining productive working relationships with communities.
- Enhance staff training to increase awareness of environmental justice, including but not limited to, public participation, meaningful community outreach, and public accessibility of information, and ensure that staff training is an integral component of all of these elements.
- Collaborate with other agencies or governmental offices (including federal, state, local, and tribal governments, and the Mexican government on cross-border issues) to leverage resources, avoid duplication of effort, and enhance effectiveness of public participation opportunities.
- Extend staff training opportunities to stakeholders, especially local governments, who interact with the communities on similar or related issues.

Availability of Information: These recommendations are designed to increase public access to information necessary for meaningful participation in environmental decision-making.

- Initiate outreach efforts as early as possible in the decision making process, before significant resources have been invested in a particular outcome.
- Design outreach efforts to appropriately address the culture of the community (e.g., urban, rural, migrant, etc.) to improve community participation.
- Distribute notices and materials widely throughout the community. If all materials cannot be widely distributed, provide quick, easy access for community members to obtain them.
- Use multiple ways of notifying the community of upcoming meetings, workshops, hearings, and proposed action dates (e.g., electronic posting on websites, announcements through local media, fliers at libraries, schools, community centers, etc.).
- Encourage communication in non-traditional ways; for example, use “universal” pictures to convey complex ideas instead of (or to supplement) technical written materials and blueprints.
- Ensure materials are distributed far enough in advance of meetings, workshops, hearings, or proposed action dates to allow community members sufficient time for review and comment.
- When environmental decisions directly affect a specific community (for example, siting decisions), hold meetings and workshops, at times and locations that are convenient for community members to attend
- Provide adequate translation or interpretation services for documents and public meetings.
- Complete the “plain, straightforward language” description of how to navigate California’s complex regulatory process (mandated by January 2002 legislation renewing Polanco Act of 1990).

Capacity Building: These recommendations are made in response to community comments about their need for resources to increase their understanding of the technical and procedural aspects of environmental decision-making, in order to participate in a meaningful way.

- Develop and widely distribute a handbook for the public that identifies and explains public participation rights and opportunities.



- Identify opportunities to provide grants and technical assistance to communities, to enhance their knowledge and understanding of environmental issues and governmental processes.
- Implement and support the Cal/EPA Environmental Justice Small Grants program (AB 2312, Statutes of 2002) to enhance stakeholder participation in environmental decision-making processes.
- Explore ways to assist stakeholders in reviewing technical documents related to environmental decisions affecting their communities (such as providing access to technical experts through local colleges or universities).
- Provide and/or support educational and training opportunities for community members such as seminars on specific media, programs, etc. For example, a lecture by agency staff or through a local college could build community understanding of brownfield redevelopment.
- Where possible, collaborate with existing community adult-education programs.

Relationship Building: These recommendations reflect public comments underscoring the need for a respectful relationship if meaningful communication is to occur.

- Initiate communication with communities before environmental decisions/concerns arise, and continue regular opportunities for ongoing communication.
- Explore opportunities to establish community affairs offices and to recruit community residents for positions in these offices.
- Establish community liaisons, advisory groups, and task forces.
- Capitalize on existing community resources by building positive and effective working relationships with community-based and non-governmental organizations.
- Ask community members to identify issues, questions, and/or concerns, separate from the agency's agenda.
- Identify what the agency can and will do, and establish timelines and accountability.
- Provide feedback to people or groups who make comments, suggestions, complaints, requests, etc. Acknowledge ideas and efforts that shape agency actions (give credit where credit is due).
- Create and maintain an atmosphere of openness and mutual respect.

***Goal #2: Ensure environmental justice is integrated into the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.***

Establishing Criteria to Identify Environmental Justice Gaps: Where Environmental Justice impacts have already been documented, or Environmental Justice concerns are clearly understood to exist, discussions about criteria should not prevent agencies from using available data and tools, and taking action to respond to those concerns. The Committee also recognizes that there are also circumstances where the existing data and tools do not allow a quick determination of either the problem or the appropriate response. Development of these data and tools should be a high priority, as should fair criteria for their use. In developing the data, tools, and criteria for their use, agencies should ensure meaningful public participation (see Goal #1).

Programs that have successfully integrated this Environmental Justice goal will meet the following criteria:

- ✓ Consider Environmental Justice issues in developing and revising programs and program elements, including explicit analysis of Environmental Justice in the staff report for significant actions, or other supporting documentation.
- ✓ Ensure that program development and adoption processes do not create new, or worsen existing, Environmental Justice problems.
- ✓ Ensure meaningful public participation in environmental decision-making processes.
- ✓ Establish guidelines, procedures, and performance measures to ensure equitable implementation and enforcement of programs.
- ✓ Include data, tools and procedures to identify existing Environmental Justice problems.
- ✓ Give high priority to actions that will address existing Environmental Justice problems.
- ✓ Dedicate resources and identify staff members responsible for assuring that the agency properly considers and addresses existing and potential Environmental Justice problems.

Programs that have less successfully integrated Environmental Justice may be identified by the presence of one or more of the following warning indicators:

- Data indicate that low income populations and/or communities of color are disproportionately impacted by air pollution.
- Public complaints are made regarding inadequate or unfair enforcement of agency rules and regulations.
- Agency resources are disproportionately deployed (i.e., fewer resources are devoted to low income communities and/or communities of color than are devoted to wealthier, Caucasian communities.
- Penalties for environmental violations are lower for violations in low income communities and/or communities of color.

*Note to Committee: The affirmative Criteria have been revised based on Committee discussion on 1/21/03, and the suggestions for warning indicators have also been written up. This is obviously a preliminary list. Do we want to keep the lists at the beginning of Goal #2, or do we want to put more specific lists under each program area (i.e., development, implementation, & enforcement)?*

Addressing Environmental Justice Gaps: The following recommendations are intended to prevent the creation of new Environmental Justice problems, and to help address existing gaps identified by the Committee. In order to facilitate review and discussion of the Committee's recommendations to address Goal #2, the Committee has grouped the recommendations into three broad categories. The categories are: (a) Program Development & Adoption, (b) Program Implementation, and (c) Program Enforcement.

*Note to Committee: The following categories contain bullets that refer to "cumulative impacts" and the Subcommittee felt this term needs more discussion from the Committee. In other arenas (namely the stakeholder process to develop Environmental Justice Policies*

*for the ARB) the term "cumulative impacts" was discarded in favor of "cumulative emissions, exposures, and health risks." That phrasing may or may not be appropriate in the context of each of the following bullets, or may need to be adjusted in recognition of the broader application of these recommendations (other media with other terms of art, e.g., discharges into water, or site remediation goals). The Subcommittee also deferred discussion of the "precautionary principle" to the full Committee; the Subcommittee wanted to include additional language to assist the Committee's discussion but the specific language here has NOT been endorsed by the Subcommittee members. Finally, the Subcommittee felt that greater specificity could be provided but more discussion is needed with the IWG about specific program areas.*

**Program Development & Adoption:** Program development and adoption varies somewhat between the Cal/EPA Boards, Departments, and Office, because their authorities, mandates, and administrative procedures are different. In general, however, these are activities undertaken to establish new program elements through a public process.

- Include an analysis of Environmental Justice in developing and revising programs and program elements, including explicit analysis of Environmental Justice in the staff report or other supporting documentation.
- Consult with communities and consider their priorities and concerns when developing or revising program elements, rules, or policies.
- Give high priority to known Environmental Justice problems when establishing program development agendas.
- Develop tools to assess cumulative impacts, and equitable, scientifically-based criteria for using these tools to identify Environmental Justice problems.
- Use a public process to identify opportunities to advance environmental justice goals within the current statutory and regulatory structures, as well as any necessary changes or clarifications.
- 
- Establish, through a public process, a working definition of the "precautionary principle" as it will be used by Cal/EPA and its Boards, Departments, and Office.
- Establish, through a public process, criteria and actions to implement the "precautionary principle", as defined by Cal/EPA and its Boards, Departments, and Office.
- Develop and implement an [EJ screening tool] based on [best management practices] to identify areas of high environmental risks. *[These need clarification, still an issue as of 3/18/03]*

**Program Implementation:** As noted already, the programs of the different Boards, Departments and Office vary considerably. Public comments were received about specific programs, or aspects of those programs. The Committee has developed recommendations following the issues raised by the public, and has grouped them along common themes. The areas considered are: Land Use and Zoning, Facility Siting and Permitting, Risk Reduction, and Site Remediation.

### Land Use and Zoning:

- Determine and articulate Cal/EPA's role in local and regional land use and zoning decisions.
- Identify opportunities to assist local and regional land use decision-makers in assessing environmental impacts and environmental justice issues.
- Develop a list of obvious, high-impact project scenarios that should be avoided, and make this list available to local land-use planners.
- Collaborate with other local governments to help them identify and address environmental justice issues, particularly as they relate to community planning, and locally undesirable land uses.

### Facility or Project Siting and Permitting:

- Identify the appropriate roles of Cal/EPA and its Boards, Departments, and Office in promoting Environmental Justice in permitting and siting decisions.
- 
- Establish, through a public process, a programmatic framework for permitting/siting decisions to:
  - identify Environmental Justice problems when evaluating a permit/siting application;
  - address the Environmental Justice problem as part of the permit/siting action

### Risk Reduction:

- Identify and address EJ gaps related to preventative approaches to risk reduction. *[Please refer to the discussion of "cumulative impacts" in the previous Note to Committee.]*
- Develop criteria and protocols for identifying and addressing EJ gaps in standard risk-assessments, taking into account sensitive populations.
- Explore opportunities for demonstration for new technologies that will reduce risks.

### Site Remediation:

- Develop criteria and protocols for identifying and addressing EJ gaps in clean-up related activities (e.g., standard setting, risk assessments, etc.).
- Give high priority to remediation projects in situations of known Environmental Justice problems.
- To promote the reuse of known or suspected contaminated (i.e., brownfield) sites, and to increase the supply of affordable housing Cal EPA should:
  - Establish a statewide database of contaminated sites that, after clean-up, have redevelopment and/or affordable housing potential, and publish this information online; *[Note: reference to "Cortese List" may be appropriate here, more info needed]*
  - Establish guidelines for clean up that are based on the intended use of the site (not currently codified). Guidelines should provide regulatory certainty and protection

from protracted and costly litigation when environmental impacts and other conditions have been met;

- Fast-track the approvals process related to brownfields remediation;
- Provide financial and technical assistance to local jurisdictions and private/non-profit developers for site assessment and inventory development;
- Eliminate duplication in oversight authority for brownfields between the DTSC and SWRCB (State Water Res. Control Board). Improve the process for determining a lead agency in order to eliminate inefficiencies that result from fragmentation; and
- Further seek clarification of the roles of state and local agencies in brownfields redevelopment, and provide fiscal and regulatory incentives to developers and communities to clean-up contaminated sites.

**Program Enforcement:** In this context, Program Enforcement refers to the activities undertaken to ensure that regulated facilities, sites, entities, and/or users comply with the requirements that apply to them, including agency response to complaints from members of the public.

- Develop criteria for identifying and addressing EJ gaps in equal application of environmental enforcement efforts.
- Identify opportunities to utilize enforcement as a means to deliver the benefits of environmental protections to all communities.
- Review the frequency of routine inspections to ensure that inspections are timely and equitable.
- Provide periodic reports on inspections completed.
- Establish a Complaint Response protocol for each Cal/EPA BDO, including accessibility of complaint lines, language barriers, timeliness of response, investigation procedures, and feedback to the complainant.
- Provide periodic reports on complaints received and outcomes.
- Establish an auditing process to ensure the complaint response process is effective.

***Goal #3: Improve research and data collection to promote and address environmental justice related to the health and environment of communities of color and low-income populations.***

The Committee heard significant comment from the public about the lack of available information regarding a wide range of issues of concern. In general, Cal EPA is mandated to improve research and data collection for all of its programs, in order to ensure environmental protection for all Californians. The knowledge gained through this effort will support environmental justice efforts. The Committee recognizes, however, that more information is needed that specifically addresses the health and environment of communities of color and low-income populations if the goal of environmental justice is to be ensured. In addition, community members need to have greater involvement in the research process if the data is to be meaningful and useful.

In this case, the Committee has not set out criteria to identify research and data gaps, *per se*; gaps are understood to exist where there is not sufficient data to answer questions (general or specific) related to Environmental Justice. Instead, the Committee is recommending steps that Cal/EPA can take to ensure that data is collected that will support efforts to respond to Environmental Justice concerns, and that once it is collected, it is handled in a manner that is consistent with the goal of Environmental Justice.

In order to facilitate review and discussion of the Committee's recommendations to address Goal #3, the Committee has grouped the recommendations into three broad categories. The categories are: (a) Data Collection, (b) Data Availability, and (c) Community-based Research.

Data Collection: These recommendations focus on ways to augment existing data, in order to better address environmental justice issues.

- In order to identify and address gaps in research and data collection, Cal/EPA should prepare a research plan for the entire agency. This plan should highlight projects that benefit multiple media and/or programs, and support leveraging and prioritizing of limited resources. Projects related to Environmental Justice goals should be given high priority. The plan should be updated annually.
- Cal/EPA should also establish a clearinghouse, available on the web, for information associated with Environmental Justice.
- Develop, promote and support efforts to collect community and environmental data that will improve understanding of environmental justice problems, and lead to solutions and prevention of further problems.
- Consult with and provide greater involvement to community members prior to designing studies of the community.
- Support research into new or alternative means to reduce pollution and protect the environment.
- Support research into cumulative impacts from multiples sources of pollution, and through multiple media.
- Assess cultural impacts, and the development of more complete databases on affected cultural issues (such as sacred sites, subsistence fishing, language barriers, etc.).
- Enhance systems for consistent environmental data collection and application to ensure applicability of data to environmental justice issues.

Data Availability: The Committee heard many complaints that when research had been done, or data was thought to exist, it was not available to those who had need of it. These recommendations are meant to enhance the availability of data, and to recognize and respect the needs of community members who agree to participate in research efforts.

- Make data collected by the agency about communities available promptly to the communities it was collected from, and other stakeholders, without violating basic privacy rights (for example by releasing an individual's medical data).
- Make data availability to the participating community members a condition of funding external research projects, where possible, especially data relating to the individual health of a community member.
- Establish mechanisms to prevent abuse of data collected from communities.



- Promote collaborative efforts between federal, state, and local agencies towards sharing of data and information relevant to environmental justice.

Community-based Research: Community-based research is used here to describe research efforts where the community plays a lead role in designing, implementing, and analyzing the results of the study.

- Establish greater respect for the knowledge base within the community.
- Explore mechanisms to address concerns about data integrity, chain of custody, bias, etc., to enhance general acceptance of community-based research.
- Establish mechanisms to support community-based research projects (e.g., grants, loans, technical assistance, or collaboration).

***Goal #4: Ensure effective cross-media coordination and accountability in addressing environmental justice issues.***

In order to facilitate review and discussion of the Committee's recommendations to address Goal #4, the Committee has grouped the recommendations into two broad categories. The categories are: (a) Cross-Media Coordination, and (b) Agency Accountability.

Cross-media Coordination: Coordination between media (such as air, water, waste, etc.) is an important aspect of Cal/EPA's overall function as an agency. These recommendations are intended to improved cross-media coordination and better support Environmental Justice efforts.

- Develop protocols for effective coordination within Cal/EPA, its Boards, Departments, and Office, including regional offices, on environmental justice issues.
- Examine mechanisms to ensure greater coordination with federal state and local agencies.
- Explore opportunities to develop environmental justice projects that can function as models for collaborative approaches on environmental justice issues (similar to projects supported by U.S. EPA in their National Environmental Justice Action Agenda).

Agency Accountability: Accountability is a critical part of effective implementation of any strategy. It was also identified, by many members of the public, that this is an area where improvements could be made.

- Ensure full consideration of these Advisory Committee recommendations by Cal/EPA and the Interagency Working Group, including a report from the Secretary of Cal/EPA to Environmental Justice stakeholders on the actions taken in response to these recommendations.
- Provide appropriate resources to carry out activities by Cal/EPA Boards, Departments and Office to address environmental justice issues.
- Develop performance measures to determine the success of environmental justice programs with review and input from EJ stakeholders.
- Promote periodic performance reports from Cal/EPA Boards, Departments, and Office, including regional offices, to external stakeholders.
- Ensure ongoing communication between Cal/EPA and external stakeholders.

- Clarify roles and responsibilities of federal, state, local, and (where applicable) tribal or Mexican governments/agencies with regard to environmental justice issues within the community.
- Ensure compliance with Title VI of the Civil Rights Act in making environmental decisions.

## VI. Implementation of Recommendations

*The Committee has not discussed the contents of this Section. In order to complete this section, the Committee must complete its core Recommendations, prioritize them, and establish reasonable next steps, and accountability. Alternatively, the Committee must eliminate those items that cannot be accomplished, or defer them to a separate effort.: Still needed, as of 3/18/03.*

- a. Next Steps
- b. Priorities
- c. Timelines
- d. Responsible Parties
- e. Resources (funding and staffing)
- f. Role of the Environmental Justice Advisory Committee

## VII. Additional Recommendations

*The Committee has not discussed the contents of this Section. In order to complete this section, the Committee must outline the nature of the recommendations or observations to be included. Alternatively, the Committee must eliminate those items that cannot be accomplished, or defer them to a separate effort.: Still needed, as of 3/18/03.*

- a. Land-Use Decision Making
  - i. Office of Planning and Research
  - ii. Local Land Use Planning Agencies
- b. Transportation Infrastructure Decision Making
- c. Other Agencies
- d. Tribal Issues
- e. Federal Issues
- f. Statutory Changes
- g. Other Recommendations

## VIII. Background Materials and References

*The Committee has not discussed the contents of this Section. In order to complete this section, the Committee must outline the nature of the recommendations or observations to be included. Alternatively, the Committee must eliminate those items that cannot be accomplished, or defer them to a separate effort.: Still needed, as of 3/18/03.*

- a. Appendix A: Responsible Agencies- Federal, State, and Local, Organized by Media
- b. Appendix B: Responsible Agencies Contact List, Organized by County
- c. Appendix C: Cal/EPA Boards, Departments, and Office
- d. Appendix D: Cal/EPA Interagency Working Group
- e. Appendix E: Cal/EPA Actions to Address Environmental Justice
- f. Appendix F: Detailed History of Environmental Justice
- g. Appendix G: Environmental Justice and Tribes
- h. Appendix H: California State Law on Environmental Justice
- i. Appendix I: Complete Summary of Public Participation in Drafting the Committee's Recommendations
- j. Appendix J: References